Hastings Law Journal

Volume 18 | Issue 3 Article 11

1-1967

Admission and Use of Evidence in the California Juvenile Courts

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ADMISSION AND USE OF EVIDENCE IN THE CALIFORNIA JUVENILE COURTS

The admission into evidence of a confession obtained without warning an accused minor of his constitutional rights does not require the reversal of a juvenile court judgment in California. This is the decision reached in the recent case of *In re Castro*.[1] While in police custody the minor made a series of confessions without receiving the warnings of his constitutional rights required by *People v. Dorado*[2] and *Miranda v. Arizona*.[3] The confessions were admitted into evidence at a juvenile court hearing and the minor appealed, seeking reversal of the juvenile court judgment determining him to be a ward of the court.

The *Castro* court recognized that the disputed confessions would be inadmissible at a criminal trial,[4] but concluded that since the juvenile court was not a criminal court the exclusionary rule had no application.[5] Yet the court held that the confessions must be completely disregarded by the judge in determining whether the minor was to be declared a ward of the juvenile court.[6] The court found sufficient evidence, without the confessions, to support the judgment.[7]

Shortly after the *Castro* decision a similar ruling was made in *In re Acuna*.[8] Citing *Castro* as authority, the court held that the failure to warn a minor of his constitutional rights prior to interrogation did not render his subsequent confession inadmissible.[9] The court agreed that the juvenile court judge must disregard the disputed confession, but found substantial evidence to support the juvenile court judgment.[10]

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[1] 243 A.C.A. 467, 52 Cal. Rptr. 469 (1966).

[2] 62 Cal. 2d 338, 42 Cal. Rptr. 169, 398 P.2d 361 (1965).

[3] 384 U.S. 436 (1966). The case holds that when an individual is taken into custody or otherwise deprived of his freedom by the authorities he must be warned prior to any questioning of his right to remain silent and of his right to the presence of an attorney or to have counsel appointed for him if he is indigent. In the absence of such warnings, no evidence obtained as a result of the interrogation may be used against him. *Id.* at 478-79.

[4] *In re* Castro, 243 A.C.A. 467, 471, 52 Cal. Rptr. 469, 471 (1966). "It is clear that if this had been a criminal trial there was an absence of the proof required of the state prior to the introduction of the confessions " *Ibid.*

[5] *Id.* at 471, 474, 52 Cal. Rptr. at 471, 473.

[6] *Id.* at 476, 52 Cal. Rptr. at 474.

[7] *Id.* at 476-77, 52 Cal. Rptr. at 474-75. The appellate court found independent evidence to support only one of the two counts of arson on which the juvenile court judgment was based. *Ibid. In re* Buros, 57 Cal. Rptr. 124 (1967), decided as this issue went to press, reversed a juvenile court judgment based on a confession obtained without warning a minor of his constitutional rights. Unlike *Castro*, the juvenile court judgment was based *solely* on the illegally obtained confession.

[8] 245 A.C.A. 423, 53 Cal. Rptr. 884 (1966).

[9] *Id.* at 427-28, 53 Cal. Rptr. at 886. "The confession of petitioner, being the result of an interrogation that lent itself to eliciting incriminating statements from him, would clearly come within the proscription of *Dorado, Escobedo* and *Miranda* if the juvenile court proceeding was a criminal trial." *Id.* at 426-27, 53 Cal. Rptr. at 886.

[10] *Id.* at 428, 53 Cal. Rptr. at 886-87. "The question before us as an appellate court is whether there is substantial evidence to support the juvenile court judge's determination that a preponderance of the evidence existed exclusive of the confession of petitioner." *Id.* at 428, 53 Cal. Rptr. at 887.

At first reading, the decisions reached in *Castro* and *Acuna* seem internally inconsistent. First it is held that the exclusionary rules of evidence laid down in *Dorado* and *Miranda* do not apply in juvenile court proceedings; then it is decided that the juvenile court judge must disregard the confessions since they would not have been admissible at a criminal trial. This note will explore the reasons for this seemingly anomalous conclusion and attempt to evaluate its validity as a rule of evidence in the juvenile courts.[11] In the process, some attention will be given to the history of the juvenile courts, the background of the California juvenile court law, and the current interest in protecting the legal and constitutional rights of juveniles.

The California Juvenile Court Hearing

The *Castro* and *Acuna* decisions are based on the California juvenile court law adopted in 1961[12] and can best be explained by reference to the pertinent sections.

The juvenile court hearing is a two-stage proceeding. The first part of the hearing is for the purpose of establishing the jurisdiction of the court over the minor.[13] Section 701 of the Welfare and Institutions Code sets out the questions to be resolved during the jurisdictional stage of the hearing. Three separately defined bases of jurisdiction are involved. Depending on the allegations of the petition, the court must decide at this point if the minor is: 1) a person described in section 600 of the Welfare and Institutions Code—a neglected or dependent minor;[14] 2) a person described in section 601 of the Welfare and Institutions Code —a minor showing a tendency toward delinquency;[15] or 3) a person described in section 602 of the Welfare and Institutions Code—a minor who has committed what would be a crime if he were an adult.[16]

This jurisdictional stage of the hearing is essentially a fact finding proceeding. For example, in the case of a minor described by section 602 of the Welfare and Institutions Code, the basic question before the court is whether the minor has committed a criminal act listed in that section. Once it has been found that

[11] Detailed discussion of whether minors before the juvenile court should be protected by all the constitutional safeguards available to criminal defendants is beyond the scope of this note. However, a general discussion of the current controversy on this subject may be found at notes 39-46 *infra* and accompanying text.

[12] CAL. WELF. & INST'NS CODE §§ 500-914.

[13] CAL. WELF. & INST'NS CODE § 701.

[14] CAL. WELF. & INST'NS CODE § 600. This category includes destitute and abandoned minors and those dangerous to the public because of deficiency or abnormality. *Ibid.*

[15] CAL. WELF. & INST'NS CODE § 601. This category includes minors who are habitually truant from school, habitually disobedient to parents or school authorities, or are in danger of leading idle, dissolute, lewd or immoral lives. *Ibid.*

[16] CAL. WELF. & INST'NS CODE § 602. A minor described by this section includes one who has violated a local or state law or one who has previously been found a person described in § 601 and has failed to obey an order of the juvenile court. *Ibid.*

One court has explained: "Section 701 is merely a procedural statute for making a judicial finding of fact that the minor is a person described by sections 600, 601 or 602. If the court finds that the minor has committed the alleged crime this is only a finding which vests jurisdiction in the juvenile court under section 602 and the court may then make the minor a ward of the court." *In re* Johnson, 227 Cal. App. 2d 37, 39, 38 Cal. Rptr. 405, 406 (1964).

a minor is a person described by the appropriate section of the law, he can be declared a ward of court. The second part of the hearing is then directed to the proper disposition of the minor.[17]

Section 701 of the Welfare and Institutions Code also describes the evidence that may be admitted and used during the first or jurisdictional stage of the hearing. *Any* evidence is admissible if it is relevant and material to the circumstances or acts alleged to bring the minor within the jurisdiction of the court.[18] However, not all evidence admitted at the jurisdictional stage of the hearing may be used to support the finding of the court. When the question of jurisdiction involves a minor described in section 600 or section 601 of the Welfare and Institutions Code, a preponderance of evidence *legally admissible in the trial of civil cases* must be adduced to support the finding.[19] Similarly, when the jurisdictional question concerns a minor described in section 602 of the Welfare and Institutions Code, a preponderance of evidence *legally admissible in the trial of criminal cases* must be adduced to support the finding of the court.[20] At the second or dispositional phase of the hearing all relevant and material evidence may be admitted and there are no limitations as to what evidence may be used to support the order of the court.[21]

In *Castro*[22] the petition alleged that the minor had committed what would have been a crime if he had been an adult[23] and that he was therefore a minor within the description of section 602 of the Welfare and Institutions Code. Since the disputed confession would not have been legally admissible at a criminal trial, the decision correctly interprets section 701 of the Welfare and Institutions Code in holding that the juvenile court judge was required to disregard the confession.[24]

Nature of the Juvenile Court Proceeding

The *Castro*[25] and *Acuna*[26] courts concluded that the juvenile court proceeding was not a criminal trial. This is expressly provided in section 503 of the Welfare and Institutions Code: "An order adjudging a minor to be a ward of the juvenile court shall not be deemed a conviction of a crime for any purpose, nor shall a proceeding in the juvenile court be deemed a criminal proceeding." The federal courts and each of the fifty states have adopted and endorsed this theory of the

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[17] CAL. WELF. & INST'NS CODE §§ 702, 706.

[18] CAL. WELF. & INST'NS CODE § 701.

[19] *Ibid.*

[20] *Ibid.* Section 701 further provides that when a minor denies an extra-judicial admission or confession, the court may continue the hearing for up to seven days so that the probation officer may subpoena witnesses to prove the allegations of the petition. *Ibid.*

[21] CAL. WELF. & INST'NS CODE § 706.

[22] *In re* Castro, 243 A.C.A. 467, 52 Cal. Rptr. 469 (1966).

[23] The alleged crime was arson.

[24] An authority on California evidence law agrees: "[I]ncompetent evidence which has been admitted must be disregarded by the judge and by the reviewing court in reaching a decision." WITKIN, CALIFORNIA EVIDENCE § 18, at 21 (2d ed. 1966).

[25] *In re* Castro, 243 A.C.A. 467, 52 Cal. Rptr. 469 (1966).

[26] *In re* Acuna, 245 A.C.A. 423, 53 Cal. Rptr. 884 (1966).

noncriminal nature of the juvenile court proceeding,[27] and it has long been recognized and supported in California decisions.[28]

Since juvenile court proceedings are noncriminal, the California courts have limited the application of those specific protections that would surround the accused at a criminal trial. For example, the right to trial by jury[29] and the right to bail[30] have been held not to apply in the juvenile courts. It has also been held that a juvenile court judge need not advise a minor of the privilege against self-incrimination.[31] A preponderance of evidence, rather than proof beyond a reasonable doubt, has been held sufficient to support a juvenile court judgment.[32] The *Castro* and *Acuna* decisions, the latest rulings based on the noncriminal nature of the juvenile court, held that since the juvenile court is not a criminal court the admission into evidence of confessions obtained in derogation of constitutional rights does not require the reversal of a juvenile court judgment.[33]

The juvenile courts in the United States were established as a result of a reform movement which began early in the twentieth century.[34] The philosophy of the juvenile courts is grounded on the premise that the state stands in the role of *parens patriae* toward the wayward minor who is made a ward of the state.[35] The state, according to this widely accepted theory, is concerned with the welfare of the child and will provide corrective care and supervision to the end that he may become a useful citizen. In the process, criminal stigma will be avoided and the minor will be spared the traumatic experience of a criminal trial. The theory of the noncriminal nature of the juvenile court proceeding has developed from this basic philosophy.[36]

Despite the wide acceptance of the theory and function of the juvenile courts,

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[27] See, *e.g.*, Pee v. United States, 274 F.2d 556 (D.C. Cir. 1959). An appendix beginning at page 561 of the case indicates that all fifty states by statute or decision have held juvenile court proceedings to be noncriminal.

[28] *E.g.*, People v. Dotson, 46 Cal. 2d 891, 299 P.2d 875 (1956); *In re* Daedler, 194 Cal. 320, 228 Pac. 467 (1924); *In re* Johnson, 227 Cal. App. 2d 37, 38 Cal. Rptr. 405 (1964); *In re* Schubert, 153 Cal. App. 2d 138, 313 P.2d 968 (1957); *In re* Dargo, 81 Cal. App. 2d 205, 183 P.2d 282 (1947).

[29] *In re* Daedler, 194 Cal. 320, 228 Pac. 467 (1924); People *ex rel.* Weber v. Fifield, 136 Cal. App. 2d 741, 289 P.2d 303 (1955).

[30] *In re* Magnuson, 110 Cal. App. 2d 73, 242 P.2d 362 (1952).

[31] *In re* Dargo, 81 Cal. App. 2d 205, 183 P.2d 282 (1947). *But cf. In re* Tahbel, 46 Cal. App. 755, 189 Pac. 804 (1920). "In practice, however, all juvenile courts in California allow the youth to assert the privilege in response to incriminating questions " Note, *The California Juvenile Court*, 10 STAN. L. REV. 471, 498 (1958).

[32] *In re* Johnson, 227 Cal. App. 2d 37, 38 Cal. Rptr. 405 (1964).

[33] See text at notes 4, 5, 9 *supra.*

[34] The first juvenile court act was passed in Illinois in 1899. PERKINS, CRIMINAL LAW 733 (1957).

[35] For a discussion of the philosophy of the juvenile courts see Kent v. United States, 383 U.S. 541, 554-55 (1966).

[36] For an excellent discussion of the development of the juvenile court concept see 3 CAL. LAW REVISION COMM'N, REPORTS, RECOMMENDATIONS & STUDIES E27 (1961). See generally PERKINS, CRIMINAL LAW 733 (1957); Note, *The Parents Patriae Theory and Its Effect on the Constitutional Limits of Juvenile Court Powers*, 27 U. PITT. L. REV. 894 (1966).

there has been increasing concern with the actual performance of the juvenile system, and a growing interest in protecting the legal rights of the child before the court.[37] In recent years a number of decisions have particularly emphasized the requirements of fairness and procedural due process in juvenile adjudications, while still accepting the basic premise that the juvenile courts are noncriminal.[38] Additionally, there has been a strong undercurrent of scholarly and judicial discussion proposing that juveniles brought to court because of criminal activity be granted all of the constitutional protections accorded an adult in similar circumstances.[39]

In *Kent v. United States*,[40] the Supreme Court of the United States recognized recent critiques of the actual operation of the juvenile court system.[41] Speaking for the court, Mr. Justice Fortas pointed out that:

> [T]here may be grounds for concern that the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children.[42]

The opinion concluded that this recognized concern would not lead the court to rule on the question of the application of constitutional guarantees to minors before the juvenile court as proposed in an amicus curiae brief.[43]

The *Kent* decision clearly does not resolve the conflict between those who support the present juvenile court system and those who urge that juveniles should be protected by all rights available to the criminal defendant.[44] To date the exclusionary rules established by the United States Supreme Court is such

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[37] See, *e.g.*, Ketcham, *The Unfulfilled Promise of the Juvenile Courts*, 7 CRIME & DELINQUENCY 97 (1961); Paulsen, *Fairness To The Juvenile Offender*, 41 MINN. L. REV. 547 (1957); Welch, *Delinquency Proceedings—Fundamental Fairness for the Accused in a Quasi-Criminal Forum*, 50 MINN. L. REV. 653 (1966); Note, *Juvenile Justice: Treatment or Travesty?*, 11 U. PITT. L. REV. 277 (1950).

[38] See, *e.g.*, Pee v. United States, 274 F.2d 556 (D.C. Cir. 1959); *In re* Alexander, 152 Cal. App. 2d 458, 313 P.2d 182 (1957); *In re* Contreras, 109 Cal. App. 2d 787, 241 P.2d 631 (1952); State v. Johnson, 141 Mont. 1, 374 P.2d 504 (1962).

[39] See, *e.g.*, *In re* Poff, 135 F Supp. 224 (D.D.C. 1955); People v. Dotson, 46 Cal. 2d 891, 899, 299 P.2d 875, 880 (1956) (Carter, J., dissenting opinion); Holmes' Appeal, 379 Pa. 599, 610, 109 A.2d 523, 528 (1954) (Musmanno, J., dissenting opinion); *cert. denied*, 348 U.S. 973 (1955); Antieau, *Constitutional Rights In Juvenile Courts*, 46 CORNELL L.Q. 387 (1961); Gardner, *A Challenge to Lawyers—The Juvenile Court*, 40 CAL. S.B.J. 349 (1965); Note, 7 SANTA CLARA LAW. 114 (1966).

[40] 383 U.S. 541 (1966).

[41] *Id.* at 555 (dictum).

[42] *Id.* at 556 (dictum).

[43] *Ibid.*

[44] During the current term, the United States Supreme Court has before it Application of Gault, 99 Ariz. 181, 407 P.2d 760 (1965), *prob. juris. noted*, 384 U.S. 997 (1966). The case is a direct challenge to the juvenile court law of Arizona. An amicus curiae brief submitted by the American Parents Committee raises the issue of the constitutional rights of minors in the juvenile court. "[T]his case poses the overall question of whether our constitutional law precepts will permit the operation of a system of social control, parallel but distinct from criminal law, which will be free from the traditional formalities and safeguards made applicable to the latter." Brief for the American Parents Committee as Amicus Curiae, p. 3.

decisions as *Escobedo v. Illinois*[45] and *Miranda v. Arizona*[46] have not been imposed on the juvenile courts.

Evidence in the California Juvenile Court: Background and Comparison

No directives on the admission and use of evidence were included in the code provisions which governed California juvenile court hearings before the enactment of the 1961 law. The prior law required only that the court "proceed to hear and dispose of the case in a summary manner."[47]

Yet, over the years juvenile court judges independently developed rules of evidence for contested cases. In 1960, fifty-seven juvenile court judges were canvassed by the Governor's Special Study Commission on Juvenile Justice. Over sixty-six per cent of the judges reported that they applied relaxed criminal rules of evidence in contested cases, while more than nineteen per cent used strict criminal rules.[48] Rules of evidence applicable in civil actions were employed by less than four per cent of the judges.[49]

Section 701 of the Welfare and Institutions Code as adopted in 1961 established the first uniform requirements for the admission and use of evidence in the juvenile courts of California. As noted, this section allows for the admission of all relevant and material evidence at the jurisdictional or fact-finding stage of the juvenile court hearing.[50] Yet only evidence legally admissible at the trial of other cases may be used to support the judgment of the court.[51] A leading authority on California evidence has called the evidentiary requirements of section 701 "a virtually unprecedented system, under which evidence is to be freely admitted although it cannot be used to support a finding on the issue as to which it was admitted."[52]

The basis of the unique evidence requirements of section 701 of the Welfare

[45] 378 U.S. 478 (1964).

[46] 384 U.S. 436 (1966).

[47] Cal. Stat. 1937, ch. 369, at 1037.

[48] REPORT OF THE GOVERNOR'S SPECIAL STUDY COMMISSION ON JUVENILE JUSTICE pt. 2, at 9 (1960) [hereinafter cited as 1960 COMMISSION REPORT].

[49] *Ibid.* The remaining judges used liberal rules, combinations and other types of rules. *Ibid.* A 1958 study showed that fifteen juvenile court judges applied strict criminal rules of evidence, while twenty-three courts had relaxed the criminal rules to varying degrees. Note, *The California Juvenile Court*, 10 STAN. L. REV. 471, 493 (1958). Neither the commission report nor the Stanford study define "relaxed criminal rules."

[50] For a complete description of the provision see text at notes 18-20 *supra*.

[51] CAL. WELF. & INST'NS CODE § 701. For the balance of this note, evidence not admissible at other trials will be termed "incompetent" evidence.

[52] Address by B. E. Witkin, in PROCEEDINGS OF THE THIRD ANNUAL INSTITUTE FOR JUVENILE COURT JUDGES AND REFEREES 127 (1964). In the same address, Mr. Witkin classified the evidence that would have to be disregarded by the juvenile court judge under the provisions of § 701 of the Welfare and Institutions Code. He listed involuntary confessions and admissions, illegally obtained evidence, opinion and hearsay evidence. *Id.* at 137-46. The need to disregard evidence obtained without warning a minor of his constitutional rights was recognized by juvenile court judges at their 1966 institute. PROCEEDINGS OF THE 1966 INSTITUTE FOR JUVENILE COURT JUDGES AND REFEREES at 3-4 (1966).

and Institutions Code may be found in the report of the Governor's Special Study Commission on Juvenile Justice. The juvenile court law adopted in 1961 is based in large part on the 1960 report of this commission, and section 701 is a modified form of a commission recommendation.[53] In its report the commission recognized the need for rules of evidence in the juvenile court,[54] but recommended that such rules be used only as a test of the *sufficiency* of the evidence.[55] The commission specifically recommended that rules of evidence not be applied to govern *admissibility*.[56] The language of the report indicates that the commission thought this approach to evidence in the juvenile courts would preserve the informal atmosphere of the court and encourage a minor's receptivity to treatment.[57]

The California juvenile court law can be compared with the New York law enacted in 1962.[58] As in California, the hearing process is divided. First a hearing is required to find if a minor has committed an alleged criminal act or has behaved in a way which indicates that he is in need of supervision.[59] The second hearing is concerned with the disposition of the minor.[60] At the first hearing only evidence that is *competent*, material and relevant may be admitted, and the finding is based on a preponderance of such evidence.[61] Since *competent* evidence generally means legally admissible evidence, the *Castro*[62] and *Acuna*[63] confessions would likely have been excluded from evidence in a New York juvenile court.[64]

The question of the admissibility of evidence obtained in derogation of constitutional rights was considered by a New York Family Court in *Matter of Williams*.[65] The court applied the exclusionary rule of *Mapp v. Ohio*[66] to evi-

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[53] 1960 COMMISSION REPORT pt. 1, at 73. The commission recommended that a preponderance of evidence not subject to objection by competent counsel under the rules of evidence observed in the trial of criminal cases be adduced to find jurisdiction. *Ibid.*

[54] "All of the reasons for employing rules of evidence in other judicial proceedings, *e.g.*, to insure truthful, reliable, and fair testimony, apply with equal force to a hearing on a minor's delinquency " 1960 COMMISSION REPORT pt. 1, at 30.

[55] *Ibid.*

[56] *Ibid.*

[57] *Id.* at 29-30. It has been suggested that the purpose of the juvenile court evidence provision is to permit the use of "nonquality" evidence of probative value. Note, *1961 California Juvenile Court Law: Effective Uniform Standards for Juvenile Court Procedure?*, 51 CALIF. L. REV. 421, 443 (1963).

[58] N.Y. FAMILY CT. ACT (McKinney 1963).

[59] N.Y. FAMILY CT. ACT § 742 (McKinney 1963).

[60] N.Y. FAMILY CT. ACT § 743 (McKinney 1963).

[61] N.Y. FAMILY CT. ACT § 744 (McKinney 1963).

[62] *In re* Castro, 243 A.C.A. 467, 52 Cal. Rptr. 469 (1966).

[63] *In re* Acuna, 245 A.C.A. 423, 53 Cal. Rptr. 884 (1966).

[64] No cases have been found which directly interpret the evidence section relating to delinquency proceedings in New York. However, writers who have analyzed the law seem to agree that any incompetent evidence would be subject to objection. *Cf.* Isaacs, *The Role Of The Lawyer In Representing Minors In The New Family Court*, 12 BUFFALO L. REV. 501, 513 (1963); Paulsen, *The New York Family Court Act*, 12 BUFFALO L. REV. 420, 432 (1963).

[65] 49 Misc. 2d 154, 267 N.Y.S.2d 91 (1966).

[66] 367 U.S. 643 (1961).

dence obtained from a search based upon information revealed by minors while they were illegally detained.[67] The *Williams* court also discussed the admissibility of confessions obtained without warning a minor of his constitutional rights: "[T]here is no reason why the exclusionary rule should not be equally applicable to a juvenile, who, by reason of his immaturity, stands in much greater need of protection from unwarranted police interrogation than an adult."[68] The court did not base its decision directly on the section of the New York law which provides that in juvenile court hearings admissible evidence should be restricted to competent evidence.[69] Nevertheless, the case apparently reflects a New York attitude toward the admission of incompetent evidence directly contrary to the holdings of the California courts in *Castro* and *Acuna*.

An Alternate Proposal

Section 701 of the California Welfare and Institutions Code allows for the admission of evidence which is useless to the juvenile court. Since incompetent evidence cannot contribute to the finding of the court, it can be argued that the law should be amended to exclude it.[70] Exclusion would seem particularly justified in contested cases where a minor is alleged to have committed a criminal act and denies the allegations of the petition.[71]

The exclusion of incompetent evidence from the juvenile court jurisdictional hearing would have at least three advantages. First, the possible prejudicial effect of such evidence would be eliminated.[72] In *People v. Dorado*[73] the California Supreme Court discussed the prejudicial nature of an illegally obtained confession and quoted *People v. Parham*[74] as follows: "Almost invariably a confession will constitute persuasive evidence of guilt, and it is therefore usually extremely difficult to determine what part it played in securing the conviction."[75]

[67] Matter of Williams, 49 Misc. 2d 154, 169, 267 N.Y.S.2d 91, 109 (1966). This is the only case found where a juvenile court has applied one of the exclusionary rules imposed on the states by the United States Supreme Court.

[68] *Id.* at 156-57, 267 N.Y.S.2d at 98 (dictum).

[69] The decision was based on the court's interpretation of the requirements of due process and fair treatment. *Id.* at 169, 267 N.Y.S.2d at 109.

[70] In an address to juvenile court judges and referees B. E. Witkin recommended that when illegally obtained evidence or the voluntariness of a confession is involved the judge should make a preliminary finding and discard it. "Perhaps, as in the case of coerced confessions, it would be wiser to give the Constitution a slight edge over the statute, and exclude at the introduction stage any evidence obtained by a violation of a constitutional right." Address by B. E. Witkin, in PROCEEDINGS OF THE THIRD ANNUAL INSTITUTE FOR JUVENILE COURT JUDGES AND REFEREES 146 (1964).

[71] Most cases in the juvenile court are not contested. For example, one juvenile court judge has estimated that 99 per cent of the minors brought to the court for delinquency admit involvement in the offense named. Alexander, *Constitutional Rights in Juvenile Court*, 46 A.B.A.J. 1206, 1208 (1960).

[72] For a discussion of evidence rules in nonjury trials see Note, *Improper Evidence in Nonjury Trials: Basis for Reversal?* 79 HARV. L. REV. 407 (1965). The writer notes the advantage of applying the same rules used for jury trials: "Judges are not expected to be superhuman, as they are when required to render decisions not based in the smallest degree on admitted inflammatory evidence " *Id.* at 414.

[73] 62 Cal. 2d 338, 42 Cal. Rptr. 169, 398 P.2d 361 (1965).

[74] 60 Cal. 2d 378, 33 Cal. Rptr. 497, 384 P.2d 1001 (1963).

[75] People v. Dorado, 62 Cal. 2d 338, 356, 42 Cal. Rptr. 169, 181, 398 P.2d 361, 373 (1965).

It would seem that an illegally obtained confession admitted into the juvenile court could be equally persuasive. Even though the juvenile court judge is required to disregard incompetent evidence, it is conceivable that his objectivity might be adversely affected by his initial exposure to the evidence. Second, if incompetent evidence were excluded, the juvenile court judge would no longer be required to sift through all admitted evidence in order to eliminate that which cannot contribute to his finding. Third, the exclusion of incompetent evidence would be an aid to the appellate court. As one writer has commented: "Without rules on admissibility the appellate court must either independently evaluate the evidence and substitute its discretion for that of the trial court or completely defer to the discretion of the trial court "[76]

On the other hand, objection to extending the technical rules of evidence to the juvenile courts is based on the concept that the rules tend to destroy the essential informal, nonadversary atmosphere of the proceeding.[77] However, section 680 of the Welfare and Institutions Code makes it clear that informality is not essential when issues are contested in California juvenile courts: *"Except where there is a contested issue of fact or law,* the proceedings shall be conducted in an informal nonadversary atmosphere with a view to obtaining the maximum cooperation of the minor "[78]

Important as the informal atmosphere may be, considerations of fairness and due process would seem to outweigh the admirable motive of sparing a child the experience of a criminal trial. As one writer has said: "Whatever the court gains by a less oppressive atmosphere, more will be lost when a child is unjustly found delinquent."[79]

Conclusion

The reason for the admission of evidence into any judicial proceeding is to aid the trier of fact in ascertaining the truth. Conversely, one compelling reason for the exclusionary rules of evidence is to keep prejudicial and untrustworthy evidence from the trier of fact. Both of these propositions are ignored when the evidence requirements of section 701 of the Welfare and Institutions Code are applied in the juvenile court. As we have seen, incompetent evidence which may be potentially untrustworthy and prejudicial is freely admissible if it is relevant and

[76] Welch, *Delinquency Proceedings—Fundamental Fairness for the Accused in a Quasi-Criminal Forum,* 50 MINN. L. REV. 653, 684 (1966). *In re* Castro, 243 A.C.A. 467, 52 Cal. Rptr. 469 (1966) is a good example of appellate court involvement in the evaluation of evidence.

[77] See Note, *Juvenile Delinquents: The Police, State Courts, and Individualized Justice,* 79 HARV. L. REV. 775, 795 (1966); Note, *The California Juvenile Court,* 10 STAN. L. REV. 471, 493 (1958).

[78] CAL. WELF. & INST'NS CODE § 680. (Emphasis added.) It can also be observed that the present California juvenile court law specifically allows representation by counsel, CAL. WELF. & INST'NS CODE § 679, and counsel can now object to evidence on the basis of "materiality" and "relevancy." Doubtless the presence of counsel has a formalizing effect on the proceedings. The possibility that the 1961 law might lead to a more formal juvenile court atmosphere was recognized by the juvenile court judges at their first institute. See JUDICIAL COUNCIL OF CALIFORNIA, NINETEENTH BIENNIAL REPORT TO THE GOVERNOR AND THE LEGISLATURE 75-76 (1963).

[79] Welch, *supra* note 76, at 685.